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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,042	05/07/2002	Jean Plouct	0508-1002	8905
466	7590	05/19/2004	EXAMINER	
YOUNG & THOMPSON			HUYNH, PHUONG N	
745 SOUTH 23RD STREET 2ND FLOOR				
ARLINGTON, VA 22202			ART UNIT	PAPER NUMBER
			1644	

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/030,042	PLOUET ET AL.
<b>Examiner</b>	Phuong Huynh	<b>Art Unit</b>
	1644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE One MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 07 January 2002.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-15 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) \_\_\_\_\_ is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) 1-15 are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.

### **DETAILED ACTION**

I. The location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 1644, Group 1640, Technology Center 1600.

II. Claims 1-15 are pending.

III. The following is noted:

Claims 1-6 encompass a method of diagnosing diseases and methods of inhibiting or promoting angiogenesis that utilize anti-idiotypic antibodies to fibroblast growth factor 1. The methods differ with respect to their method steps and therapeutic endpoints. In addition, the methods of stimulating versus inhibiting angiogenesis are mutually exclusive.

Therefore, the restriction has been set forth for each as separate groups, irrespective of the format of the claims.

#### ***Election/Restrictions***

IV. Restriction to one of the following inventions is required under 35 U.S.C. 121 and 372:

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1:

1. Claims 1-3, 5 and 6, drawn to a method of using anti-idiotypic antibodies of fibroblast growth factor 1 for the preparation of a medicament intended for treating a specific disease in which endothelial cells are involved in a process of angiogenesis by **inhibiting angiogenesis**.
2. Claims 1-2, and 4-5, drawn to a method of using anti-idiotypic antibodies of fibroblast growth factor 1 for the preparation of a medicament intended for treating a specific disease in which endothelial cells are involved in a process of angiogenesis by **promoting angiogenesis**.
3. Claim 1, drawn to a method of using anti-idiotypic antibodies of fibroblast growth factor 1 for **diagnosing disease** in which endothelial cells are involved in a process of angiogenesis.

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4. Claims 7-15, drawn to an anti-idiotypic monoclonal or humanized antibody that binds specifically to fibroblast growth factor 1, which is a ligand for the human receptor FGFR-2b, a method of preparing said antibody and a pharmaceutical composition comprising said antibody.

The inventions listed as Groups 1-4 do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The '115 patent (March 1998; PTO 892) teaches a method of using anti-idiotypic antibodies of fibroblast growth factor as well as a pharmaceutical composition comprising the reference antibodies for treating and diagnosing diseases in which adipocyte are involved.

Nabel et al (Nature 362(6423): 844-6, April 1993; PTO 892) teach fibroblast growth factor 1 promotes intimal hyperplasia and angiogenesis in vivo (See abstract, in particular).

Jouanneau et al (Growth Factors 12(1): 37-47, 1995; PTO 892) teach FGF-1 secreted by carcinoma cells promotes angiogenesis and rapid tumor cell proliferation. It would have been obvious to one ordinary skill at the time the invention was made to use anti-idiotypic antibodies of FGF for diagnosis of disease as taught by the '115 patent for angiogenesis in tumor as taught by Nabel et al or Jouanneau et al.

Since Applicant's inventions do not contribute a special technical feature when viewed over the prior art they do not have single general inventive concept and lack unity of invention.

- V. Accordingly, Groups 1-4 are not so linked as to form a single general inventive concept and restriction is proper.
- VI. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.
- VII. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim will be rejoined in accordance with the provisions of MPEP § 821.04.  
**Process claims that depend from or otherwise include all the limitations of the patentable**

product will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103, and 112. Until an elected product claim is found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowed product claim will not be rejoined.

See “Guidance on Treatment of Product and Process Claims in light of *In re Ochiai, In re Brouwer* and 35 U.S.C. § 103(b),” 1184 O.G. 86 (March 26, 1996). Additionally, in order to retain the right to rejoinder in accordance with the above policy, Applicant is advised that the process claims should be amended during prosecution either to maintain dependency on the product claims or to otherwise include the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

- VIII. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).
- IX. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuong Huynh “NEON” whose telephone number is (571) 272-0846. The examiner can normally be reached Monday through Friday from 9:00 am to 5:30 p.m. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (571) 272-0841. The IFW official Fax number is (703) 872-9306.

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X. Any information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Phuong N. Huynh, Ph.D.

Patent Examiner

Technology Center 1600

May 13, 2004

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